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COMMITTEE ON CRIME PREVENTION AND CONTROL
Eleventh session
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Agenda item 5

CONTINUATION OF PREPARATIONS FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Draft resolution submitted by Albert L. O. Metzger (Sierra Leone), Vice-Chairman of the Committee, on the basis of informal consultations held on draft resolution II contained in document E/AC.57/1990/5/Add.5

The Committee on Crime Prevention and Control recommends to the Economic and Social Council that it transmit the following draft resolution to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders:

"Basic Principles on the Role of Lawyers

"The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

"Recalling the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and endorsed by the General Assembly in its resolution 40/32 of 29 November 1985,

"Recalling also resolution 18 of the Seventh Congress, 2/ in which the Congress recommended that Member States provide for the protection of practising lawyers against undue restrictions and pressures in the exercise of their functions

"Taking note with appreciation of the work accomplished, in pursuance of Seventh Congress resolution 18, by the Committee on Crime Prevention and Control, by the Interregional Preparatory Meeting for the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders on Topic 5: 'United Nations Norms and Guidelines in Crime Prevention and Criminal Justice: Implementation and Priorities for Further Standard Setting', 3/ and by the regional preparatory meetings for the Eighth Congress,

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1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August to 6 September 1985: Report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

2/ Ibid., sect. E.

3/ A/CONF.144/IPM.5.

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"1. Adopts the Basic Principles on the Role of Lawyers set forth in the annex to the present resolution;

"2. Recommends the Basic Principles for national, regional and interregional action and implementation, taking into account the political, economic, social and cultural circumstances and traditions of each country;

"3. Invites Member States to take into account and to respect the Basic Principles within the framework of their national legislation and practice;

"4. Also invites Member States to bring the Basic Principles to the attention of lawyers, judges, members of the executive and the legislature and the public in general;

"5. Further invites Member States to inform the Secretary-General every five years, beginning in 1992, of the progress achieved in the implementation of the Basic Principles, including their dissemination, their incorporation into domestic legislation, practice, procedures and policies, the problems faced in their implementation at the national level and assistance that might be needed from the international community, and requests the Secretary-General to report thereon to the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders;

"6. Appeals to all Governments to promote seminars and training courses at the national and regional levels on the role of lawyers and on respect for equality of conditions of access to the legal profession;

"7. Urges the regional commissions, the regional and interregional institutes in crime prevention and criminal justice, the specialized agencies and other entities within the United Nations system, other intergovernmental organizations concerned and non-governmental organizations in consultative status with the Economic and Social Council to become actively involved in the implementation of the Basic Principles and to inform the Secretary-General of the efforts made to disseminate and implement the Basic Principles and the extent of their implementation, and requests the Secretary-General to include this information in his report to the Ninth Congress;

"8. Calls upon the Committee on Crime Prevention and Control to consider, as a matter of priority, ways and means of ensuring the effective implementation of this resolution;

"9. Requests the Secretary-General:

"(a) To take steps, as appropriate, to bring this resolution to the attention of Governments and all the United Nations bodies concerned, and to provide for the widest possible dissemination of the Basic Principles;

"(b) To include the Basic Principles in the next edition of the United Nations publication entitled Human Rights: A Compilation of International Instruments; 4/

"(c) To provide Governments, at their request, with the services of experts and regional and interregional advisers to assist in implementing the Basic Principles and to report to the Ninth Congress on the technical assistance and training actually provided;

"(d) To report to the Committee, at its twelfth session, on the steps taken to implement the Basic Principles.

4/ United Nations publication, Sales No. E.88.XIV.1.

"Annex

"BASIC PRINCIPLES ON THE ROLE OF LAWYERS

"Whereas in the Charter of the United Nations the peoples of the world affirm, inter alia, their determination to establish conditions under which justice can be maintained, and proclaim as one of their purposes the achievement of international co-operation in promoting and encouraging respect for human rights and fundamental freedoms without distinction as to race, sex, language, or religion,

"Whereas the Universal Declaration of Human Rights a/ enshrines the principles of equality before the law, the presumption of innocence, the right to a fair and public hearing by an independent and impartial tribunal, and all the guarantees necessary for the defence of everyone charged with a penal offence,

"Whereas the International Covenant on Civil and Political Rights b/ proclaims, in addition, the right to be tried without undue delay and the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,

"Whereas the International Covenant on Economic, Social and Cultural Rights b/ recalls the obligation of States under the Charter to promote universal respect for, and observance of, human rights and freedoms,

"Whereas the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment c/ provides that a detained person shall be entitled to have the assistance of, and to communicate and consult with, legal counsel,

"Whereas the Standard Minimum Rules for the Treatment of Prisoners d/ recommend, in particular, that legal assistance and confidential communication with counsel should be ensured to untried prisoners,

"Whereas the Safeguards Guaranteeing Protection of Those Facing the Death Penalty e/ reaffirm the right of everyone suspected or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings, in accordance with article 14 of the International Covenant on Civil and Political Rights, b/

"Whereas the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power f/ recommends measures to be taken at the international and national levels to improve access to justice and fair treatment, restitution, compensation and assistance for victims of crime,

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a/ General Assembly resolution 217 A (III) of 10 December 1948.

b/ General Assembly resolution 2200 A (XXI), annex, of 16 December 1966.

c/ General Assembly resolution 43/173, annex, of 9 December 1988.

d/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. G.

e/ Ibid., sect. G.

f/ General Assembly resolution 40/34, annex, of 29 November 1985.

"Whereas adequate protection of the human rights and fundamental freedoms to which all persons are entitled, be they economic, social and cultural, or civil and political, requires that all persons have effective access to legal services provided by an independent legal profession,

"Whereas professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and co-operating with governmental and other institutions in furthering the ends of justice and public interest,

"The Basic Principles on the Role of Lawyers, set forth below, which have been formulated to assist Member States in their task of promoting and ensuring the proper role of lawyers, should be respected and taken into account by Governments within the framework of their national legislation and practice and should be brought to the attention of lawyers as well as other persons, such as judges, prosecutors, members of the executive and the legislature, and the public in general. These principles shall also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.

"Access to lawyers and legal services

"1. Everyone is entitled to call upon the assistance of a lawyer of his choice to protect and establish his rights and to defend him in all stages of criminal proceedings.

"2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.

"3. Governments shall ensure the provision of sufficient funding and other resources for legal services to be provided to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall co-operate in the organization and provision of services, facilities and other resources.

"4. It is the responsibility of Governments and professional associations of lawyers to promote programmes aimed at informing the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. For this purpose, special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.

"Special safeguards in criminal justice matters

"5. It is the duty of Governments to ensure that everyone is immediately informed by the competent authority of his right to be assisted by a lawyer of his own choice at his arrest, detention or imprisonment or when he is charged with a criminal offence.

"6. Any such person who does not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to him in order to provide effective legal assistance, without payment by him if he lacks sufficient means to pay for such services.

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"7. Governments shall further ensure that a person arrested, detained or imprisoned, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.

"8. An arrested, detained or imprisoned person shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.

"Qualifications and training

"9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.

"10. It is the duty of Governments, professional associations of lawyers and educational institutions to ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status.

"11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.

"Duties and responsibilities

"12. Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.

"13. The duties of a lawyer towards his or her client shall include:

"(a) Advising the client as to his or her legal rights and obligations, and as to the working of the legal system in so far as it is relevant to the legal rights and obligations of the client;

"(b) Assisting the client in every appropriate way, and taking legal action to protect him or his interests;

"(c) Assisting the client before courts, tribunals or administrative authorities, where appropriate.

"14. Lawyers, in protecting the rights of their clients and in promoting the cause of justice, shall seek to uphold human rights and fundamental freedoms recognized by national and international law and shall at all times act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.

"15. A lawyer shall always loyally respect the interests of his client.

"Guarantees for the functioning of lawyers

"16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.

"17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.

"18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.

"19. No court or administrative authority before whom the right of counsel is recognized shall refuse to recognize the right of a qualified lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.

"20. A lawyer shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in his professional appearances before a court, tribunal or other legal or administrative authority.

"21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients, and, in criminal proceedings, not later than at the conclusion of investigation or pre-trial proceedings.

"22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.

"Freedom of expression and association

"23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.

"Professional associations of lawyers

"24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.

"25. Professional associations of lawyers shall co-operate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.

"Disciplinary proceedings

"26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.

"27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.

"28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.

"29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles."

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CONTINUATION OF PREPARATIONS FOR THE EIGHTH UNITED NATIONS CONGRESS ON THE PREVENTION OF CRIME AND THE TREATMENT OF OFFENDERS

Draft resolution submitted by Albert L. O. Metzger (Sierra Leone), Vice-Chairman of the Committee, on the basis of informal consultations held on draft resolution I contained in document E/AC.57/1990/5/Add.3

The Committee on Crime Prevention and Control recommends to the Economic and Social Council that it transmit the following draft resolution to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders:

"Prevention and control of organized crime

"The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

"Recognizing that the growing threat of organized crime, with its highly destabilizing and corrupting influence on fundamental social, economic and political institutions, represents a challenge demanding accrued and more effective international co-operation,

"Recalling that the Milan Plan of Action, 1/ adopted by consensus at the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, recommended that it was imperative to launch a major effort to control and eventually eradicate the destructive phenomena of illicit drug traffic and abuse and of organized crime,

"Recalling also that the Seventh Congress, in its resolution 1, 2/ recommended that the Committee on Crime Prevention and Control should be requested to develop a comprehensive framework of guidelines and standards that would assist Governments in the development of measures to deal with organized crime at the national, regional and international levels,

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* E/AC.57/1990/1.

"1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August - 6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

"2/ Ibid., sect. E.

"Recalling further that the General Assembly, in its resolution 40/32 of 29 November 1985, approved the Milan Plan of Action as a useful and effective means of strengthening international co-operation in the field of crime prevention and criminal justice, and endorsed the other resolutions adopted unanimously by the Seventh Congress,

"Noting that the General Assembly in its resolutions 41/107, 42/59 and 43/99, of 4 December 1986, 30 November 1987 and 8 December 1988, respectively, as well as the Economic and Social Council in its resolutions 1986/10 and 1987/53 of 21 May 1986 and 28 May 1987, respectively, urged Member States to accord priority, inter alia, to the implementation of the recommendations contained in the Milan Plan of Action,

"Noting also that the Economic and Social Council, in its resolution 1989/70, of 24 May 1989, called upon Governments, international organizations and interested non-governmental organizations to co-operate with the Committee on Crime Prevention and Control in giving special attention to promoting international co-operation in combating organized crime,

"Noting further that the General Assembly, in its resolution 44/72 of 8 December 1989, reaffirmed the continued validity of the Milan Plan of Action and requested the Eighth Congress, inter alia, to propose viable control measures aimed at eradicating the activities of organized crime,

"1. Adopts the guidelines contained in the annex to the present resolution as valuable recommendations for national and international action against organized crime;

"2. Urges Member States to give favourable consideration to their implementation both at the national and the international levels, as may be appropriate.

"Annex

"GUIDELINES FOR THE PREVENTION AND CONTROL OF ORGANIZED CRIME

"A. National measures

"Preventive strategies

"1. Raising public awareness and mobilizing public support are important elements of any preventive action. Education and promotional programmes and the process of public exposure have been successful in changing community attitudes and in enlisting public support. Measures of this kind can help to counter public revenue fraud and can be further developed and utilized on a systematic basis by targeting areas of special social and economic harm to the community and by enlisting the co-operation of the mass media in playing a positive role.

"2. Research into the structure of organized crime and the evaluation of the effectiveness of existing countermeasures should be encouraged, since it can contribute to the establishment of a more informed basis for prevention programmes. For example, research in relation to corruption, its causes, nature and effect, its links to organized crime and anti-corruption measures is a prerequisite to the development of preventive programmes.

"3. Possible devices to prevent or minimize the impact of organized crime should be continuously explored. While the whole question of crime prevention is an underdeveloped area in many countries, specific measures in a number of spheres have been effective. Detailed programmes that are designed to place obstacles in the way of a potential offender, reduce opportunities for crime and make its commission more conspicuous should be encouraged. Fraud control programmes represent a significant and positive step in this direction. Other measures include risk analysis to assess vulnerability to fraud, control strategies in relation to such areas as systems and procedures, management and the supervision of staff, physical security, information and intelligence, computers, investigative strategies and training programmes. The creation of anti-corruption agencies or similar mechanisms should also be pursued. Crime impact studies and the identification of criminogenic factors of new development programmes would provide opportunities for the adoption of remedial and preventive measures at the planning stage.

"4. Improvements in the efficiency of law enforcement and criminal justice are important preventive strategies based on more efficient and fair processes that act as a deterrent to crime and strengthen guarantees of human rights. Planning processes designed to integrate and co-ordinate relevant criminal justice agencies that often operate independently of each other, as stressed in the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order, a/ will also serve as a deterrent to crime.

"5. Better training to upgrade skills and professional qualifications of law enforcement and judicial personnel should be undertaken to improve effectiveness, consistency and fairness in national criminal justice systems. Regional and joint training programmes should be developed in order to exchange information on successful techniques and new technology.

"6. The efforts of drug-producing countries aimed at the eradication of the illicit production and processing of drugs should be recognized and supported. In particular, developed countries should grant adequate technical and financial assistance for the implementation of crop substitution programmes. The latter should also increase their efforts to achieve a radical reduction in illicit drug demand and consumption within their national borders.

"Criminal legislation

"7. Legislation should be encouraged that defines new offences with respect to money laundering and organized fraud and the offence of opening and operating accounts under a false name. Computer crime is another area that requires consideration. In addition, there is a need for reform in civil, fiscal and regulatory legislation that relates to the control of organized crime. Information on significant innovations that have occurred in recent years should be widely shared through the United Nations, with a view to facilitating the development of a solid basis for the harmonization of criminal law dealing with organized crime.

"8. Forfeiture of the proceeds of crime represents one of the most significant recent developments. Important in this context are the following: provision for the freezing or withholding, and the confiscation or forfeiture, of

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a/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August - 6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. B.

property used in, or derived from, the commission of an offence; and orders for pecuniary penalties representing a court assessment of the monetary value of the benefit derived by the offender from the commission of the offence. Viable remedies that have been developed in several countries on those matters should be brought, in a systematic way, to the attention of other interested countries, with a view to their more widespread utilization.

"Criminal investigation

"9. Attention should be focused on new methods of criminal investigation and the techniques developed in various countries of 'following the money trail'. Important in this context are the following: orders requiring financial institutions to provide all the information necessary to follow the money trail, including details of accounts belonging to a particular person, and orders requesting them to report suspect transactions to the appropriate authorities. Banks and financial institutions should not resort to the principle of secrecy once there exists a judicial order issued by the competent judiciary authority.

"10. The use of telecommunications and electronic surveillance is also a relevant and effective procedure, subject to human rights considerations.

"11. Schemes for the protection of witnesses against violence and intimidation are becoming increasingly important in the criminal investigation and trial process and in enforcement efforts against organized crime. These procedures involve the provision of protected accommodation and physical protection, relocation, monetary support and a new identity for the witnesses.

"Law enforcement and criminal justice administration

"12. Law enforcement plays a crucial role in programmes against organized crime. It is important to ensure that law enforcement agencies have adequate powers, subject to proper human rights safeguards. Consideration should be given to the necessity of establishing a specialized interdisciplinary agency to deal specifically with organized crime.

"13. Major emphasis should also be placed on the application of technical and organizational measures designed to increase the effectiveness of the investigative and sentencing authorities, including prosecutors and the judiciary. Furthermore, courses on professional ethics should be incorporated into the curricula of law enforcement and judicial training institutions. Some of the instruments developed by the United Nations could be used for this purpose, such as the Basic Principles on the Independence of the Judiciary b/ and the Code of Conduct for Law Enforcement Officials. c/

"B. International co-operation

"14. The transnational dimensions of organized crime require the urgent development of new and effective co-operative arrangements on a more comprehensive basis. The exchange of information between relevant agencies of Member States is also an important activity that needs to be strengthened and developed further.

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b/ Ibid, sect. D.

c/ General Assembly resolution 34/169, annex.

"15. Governments should vigorously support all initiatives by countries and international institutions to combat illicit drug-trafficking, and should warn others of the imminent danger represented by organized crime. All countries must be involved in combating illicit drug-trafficking on the basis of shared responsibility. In this respect, consistent and continuous global international interdiction efforts, combining the exchange of the necessary data and operational resources, should be encouraged and undertaken.

"16. Model legislation for the forfeiture of assets from illegally acquired property should be developed and implemented.

"17. Specific strategies and methods should be developed for erecting stronger barriers between legitimate financial markets and the market in illegally acquired capital, and co-operative arrangements applicable to offshore finance and to operations involving global electronic fund transfers should be devised, through the close co-ordination of the international organizations and agencies concerned.

"18. Technical co-operation in its various forms, with expanded advisory services, should be strengthened in order to share common experiences and innovations and to assist countries in need. International, regional and subregional conferences bringing together members of the law enforcement, prosecution and judicial authorities should be encouraged.

"19. Modern technological advances should be used in the area of passport and travel controls, and efforts should be encouraged to monitor and identify cars, boats and aircraft used in transnational theft or transfer, or for illicit trans-shipments.

"20. Secure global, regional and national data bases containing law enforcement, financial and offenders' records should be established or expanded.

"21. Mutual assistance, the transfer of criminal proceedings and the enforcement of criminal judgements, including confiscation and forfeiture of illegal assets, as well as extradition procedures, should receive priority attention.

"22. Comparative research and data collection related to issues of transnational organized crime, its causes, its links to domestic instability and other forms of criminality, as well as its prevention and control, should be supported.

"23. The United Nations regional and interregional institutes for crime prevention and control and the intergovernmental and non-governmental organizations concerned should give increased attention to the issue of organized crime.

"24. The United Nations Development Programme and other funding agencies of the United Nations system, as well as Member States, should be urged to strengthen their support for national, regional and international programmes addressed to the prevention and control of organized crime."

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Draft resolution submitted by Albert L.O. Metzger (Sierra Leone), Vice-Chairman of the Committee, on the basis of informal consultations held on draft resolution II contained in document E/AC.57/1990/5/Add.3

The Committee on Crime Prevention and Control recommends to the Economic and Social Council that it transmit the following draft resolution to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders:

"Terrorist criminal activities

"The Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,

"Aware of the grave menace that national and international terrorist criminal activities pose to social and political stability and to the lives of countless human beings,

"Concerned by the rapid internationalization of these criminal operations,

"Convinced that the trend towards the internationalization of terrorist activities makes imperative a corresponding internationally co-ordinated response of global dimensions,

"Recalling that the Milan Plan of Action, 1/ adopted by consensus by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, affirmed that priority must be given to combating terrorism in all its forms including, when appropriate, co-ordinated and concerted action by the international community,

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* E/AC.57/1990/1.

1/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

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"Recalling also that the Seventh Congress, in its resolution 23, 2/ requested that the Committee on Crime Prevention and Control should consider the development of recommendations for international action to strengthen law enforcement measures, including extradition procedures and other arrangements for legal assistance and co-operation, with respect to offences of a terrorist nature,

"Noting that the General Assembly, in its resolution 40/32 of 29 November 1985, approved the Milan Plan of Action as a useful and effective means of strengthening international co-operation in the field of crime prevention and criminal justice, and endorsed the other resolutions adopted unanimously by the Seventh Congress,

"Noting further that the General Assembly, in its resolutions 41/107, 42/59 and 43/99 of 4 December 1986, 30 November 1987 and 8 December 1988, respectively, as well as the Economic and Social Council, in its resolutions 1986/10 and 1987/53 of 21 May 1986 and 28 May 1987, respectively, urged Member States to accord priority, inter alia, to the implementation of the recommendations contained in the Milan Plan of Action,

"Aware that the General Assembly, in its resolution 44/72 of 8 December 1989, reaffirmed the continued validity of the Milan Plan of Action and requested the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, inter alia, to propose viable control measures for combating terrorist criminal activities,

"Recalling further the concern about, and condemnation of, terrorism expressed by the General Assembly in its resolutions 3034 (XXVII), 31/102, 32/147, 34/145, 36/109, 38/130, 40/61, 42/59 and 44/29 of 18 September 1972, 15 December 1976, 16 December 1977, 17 December 1979, 10 December 1981, 19 December 1983, 9 December 1985, 30 November 1987 and 4 December 1989, respectively,

"1. Adopts the recommendations contained in the annex to the present resolution as a set of valuable measures for national and international concerted action against international terrorism;

"2. Urges Member States to give favourable consideration to the implementation of these recommendations at both the national and the international level.

"Annex

"MEASURES AGAINST INTERNATIONAL TERRORISM

"A. Definition

"1. Since the first study a/ of international terrorism was conducted by the United Nations in 1972, the international community has been unable to arrive at a

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2/ Ibid., sect. E.

a/ "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes: Study prepared by the Secretariat in accordance with the decision taken by the Sixth Committee at its 1314th meeting, on 27 September 1972" (A/C.6/418).

universally agreed meaning of what is included in the term "international terrorism". Nor has it reached sufficient general agreement on the measures needed to prevent and control the harmful manifestations of acts of terrorist violence.

"2. The need to have a specific definition of international terrorism is, however, of questionable value for the prevention and control of the manifestations of the phenomenon. A preferred approach is to identify conduct that the international community deems unacceptable, and that it agrees to prevent and control by developing effective means for the implementation and enforcement of measures, in accordance with established principles of international law. Consequently, instead of attempting to define the phenomenon in an abstract way, a list of concrete activities or actions that the international community considers unacceptable and that are, therefore, considered as terrorist conduct should be compiled.

"3. Furthermore, the international community should understand better the underlying causes that bring about such conduct in order to develop measures for its prevention and control.

"B. Identification of the problems

"4. Existing international norms may not in certain areas be sufficient to control all forms and manifestations of terrorist violence. The following issues are of particular concern: the absence of a clear definition of victims of terrorism; the limits of the use of force in connection with wars of national liberation and conflicts of a non-international character; the limits of the use of force by States in response to what they may perceive as constituting acts of terrorist violence; State policies and practices that may be considered by other States as constituting a violation of international treaty obligations; the absence of specific norms on State responsibility regarding the failure to carry out existing international obligations; the abuse of the privilege of diplomatic immunity and the diplomatic pouch; the absence of norms concerning the responsibility of States for acts not prohibited by international law; the absence of international regulation and control of the traffic and trade in arms; the inadequacy of international mechanisms for the peaceful resolution of conflicts and for the enforcement of internationally protected human rights; the lack of universal acceptance of the principle of aut dedere aut iudicare; and the shortcomings of international co-operation in the effective and uniform prevention and control of all forms and manifestations of terrorist violence.

"C. International co-operation for the effective and uniform prevention and control of terrorism

"5. Effective measures for international co-operation in the prevention of terrorist violence should be developed at the international, regional and bilateral levels. These include: co-operation between law enforcement agencies, prosecution authorities and the judiciary; increasing integration and co-operation within the various agencies responsible for law enforcement and criminal justice, with due regard to fundamental human rights; inclusion of modalities of inter-State co-operation in penal matters at all levels of enforcement and criminal justice; increasing education and training of law enforcement personnel with regard to crime prevention and modalities of international co-operation in penal matters, including the development of specialized courses on international criminal law and comparative penal law and procedures, as a part of legal education as well as professional and

judicial training; and the development of both general educational and public awareness programmes through the mass media in order to enlighten the public on the dangers of terrorist violence.

"D. Jurisdiction

"6. Greater uniformity in the laws and practices of States concerning both criminal and extraterritorial jurisdiction should be encouraged, while over-extension of territorial jurisdiction should be avoided in order to prevent unnecessary legal conflicts between States.

"7. Jurisdictional priorities should be established giving territoriality the first priority, followed by other principles in accordance with existing international law.

"E. Extradition

"8. Extradition should be facilitated as one of the most effective procedures for implementing the principle of aut dedere aut iudicare, and States should endeavour to develop and implement effectively international extradition treaties, be they part of multilateral conventions, regional conventions or bilateral agreements.

"9. The political offence exception should not be a bar to extradition for crimes of terrorist violence under existing international conventions, except in cases when the requested State decides to undertake prosecution of the requested person or to transfer the proceedings to another State to conduct the prosecution.

"10. States are encouraged to rely on existing extradition provisions in multilateral treaties whenever there is an absence of bilateral treaties.

"11. In view of the increasing number of multilateral and bilateral treaties, the efforts of the United Nations to elaborate a model treaty on extradition constitute a useful beginning. In addition, the United Nations could also consider elaborating a multilateral convention on extradition to remove gaps and loopholes in existing treaties and current extradition procedures.

"12. Lawful alternatives to extradition, such as deportation or voluntary return subject to appropriate judicial guarantees, should be encouraged.

"F. Mutual assistance and co-operation

"13. The prevention and control of terrorist violence depends on effective mutual co-operation and assistance between States in securing evidence with respect to the prosecution or extradition of the offenders.

"14. States are encouraged to lend each other the widest possible mutual assistance and co-operation in penal matters, subject to respect for internationally recognized human rights, and to rely on the provisions of multilateral treaties and specific regional and bilateral agreements. To achieve this end, the model treaty on mutual assistance in criminal matters constitutes a basis for strengthened international co-operation.

"G. Non-applicability of defence

"15. Defence based on obedience to superior orders, or acts of State, or immunities granted for the commission of the crime shall not apply with respect to persons who have violated international conventions prohibiting acts of terrorist violence.

"H. Conduct of States

"16. Resort to terrorist violence by States that by their conduct violate international law should be more effectively curbed by the international community, and the United Nations should develop mechanisms for the control of such conduct, particularly through the strengthening of United Nations machinery for the preservation of peace and security and the protection of human rights.

"17. Measures by the international community to curb terrorism that is supported, carried out or acquiesced in by States should be encouraged.

"I. Protection of targets of high vulnerability

"18. A study concerning the development of a new international convention that would enhance the protection of targets that are particularly vulnerable, the destruction of which would cause great harm to populations or cause severe damage to society, such as hydroelectricity or nuclear facilities, should be undertaken.

"19. The United Nations, in co-operation with the specialized agencies concerned, should convene a conference of experts to identify such highly vulnerable targets and to develop appropriate measures for their protection. The United Nations should assist any country that suffers from terrorism or from the presence of terrorist organizations on its territory to put an end to that phenomenon.

"J. Control of weapons, ammunition and explosives

"20. States should develop appropriate national legislation for the effective control of weapons, ammunition and explosives and other dangerous materials that find their way into the hands of persons who could use them for the purposes of terrorism.

"21. International regulations on the transfer, import, export and storage of such objects should be developed so that customs and border controls can be harmonized to prevent their transnational movement, except for established lawful purposes.

"K. Protection of victims

"22. States should establish appropriate mechanisms for the protection, and introduce relevant legislation for the assistance, of victims of terrorism, in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. b/

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b/ Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August - 6 September 1985 (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. C.

"23. International norms concerning the subject referred to in the previous paragraph should also be elaborated.

"L. Protection of the judiciary and of criminal justice personnel

"24. States should adopt measures and policies aimed at the effective protection of the judiciary and of criminal justice personnel, including jurors and lawyers involved in trials of terrorism cases, and should also co-operate between themselves in the implementation of such measures.

"25. States with experience in the field of witness protection programmes should consider lending assistance to other States contemplating similar programmes.

"M. Treatment of offenders

"26. Among the aims of criminal law are deterrence, prevention and the resocialization of offenders, but such aims can seldom be achieved with respect to ideologically motivated offenders. It is therefore recommended that studies should be undertaken concerning the treatment of such offenders, that programmes should be designed for them during their imprisonment, and that alternative measures of correction and programmes oriented to social defence should be developed.

"27. Consideration should be given to the establishment of a uniform standard of penalties to be imposed on terrorists in different countries in order to eliminate significant disparities.

"28. Such offenders must be treated without discrimination and in accordance with internationally recognized human rights standards and norms, as enunciated in the Universal Declaration of Human Rights, c/ the International Covenant on Civil and Political Rights, d/ the Slavery Convention, e/ the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, f/ the Abolition of Forced Labour Convention, g/ the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment h/ and the Standard Minimum Rules for the Treatment of Prisoners. i/

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c/ General Assembly resolution 217 A (III).

d/ General Assembly resolution 2200 A (XXI), annex.

e/ General Assembly resolution 794 (VIII).

f/ Human Rights: A Compilation of International Instruments (United Nations publication, Sales No. E.88.XIV.1), sect. F. 26.

g/ Ibid., sect. F. 28.

h/ General Assembly resolution 39/46, annex.

i/ Human Rights: ..., sect. G. 30.

"N. Role of the mass media

"29. States should consider the development of guidelines for the mass media or encourage the establishment of voluntary guidelines to control the following: sensationalizing and justifying terrorist violence; disseminating strategic information on potential targets; and disseminating tactical information while terrorist acts are taking place, thereby possibly endangering the lives of innocent civilians and law enforcement personnel or impeding effective law enforcement measures to prevent or control such acts and to apprehend the offenders. These guidelines are in no way intended to restrict the internationally recognized basic human right of freedom of speech and information or to encourage interference in the domestic affairs of other States.

"O. Codification of international criminal law and creation of an international criminal court

"30. International criminal law should be codified and the work of the International Law Commission on various aspects of codification should be encouraged, in co-operation with the Committee on Crime Prevention and Control.

"31. The possibility of establishing a special penal jurisdiction within the International Court of Justice, or a separate international criminal court, should be considered. Such drafts as the 1951 and 1953 draft statutes for the establishment of an international criminal court and the 1980 draft statute for the establishment of an international jurisdiction to implement the International Convention on the Suppression and Punishment of the Crime of Apartheid j/ should be considered. Also, the United Nations should encourage States to explore seriously the possibility of establishing such an international court under the auspices of the Organization, in which grave international crimes, and particularly terrorism, could be brought to trial. This goal could be achieved by the application of the principle of universal jurisdiction to certain particularly harmful and/or hideous crimes.

"P. Enhancing the effectiveness of international co-operation

"32. The United Nations, in co-operation with specialized agencies such as the International Civil Aviation Organization, the International Maritime Organization, and the International Atomic Energy Agency, should prepare annual reports on compliance with existing international conventions, including detailed reporting on incidents and cases (arrest, prosecution, adjudication and sentencing), to be made available for international circulation.

"33. States that are signatories to international conventions prohibiting terrorist violence are urged to ratify those conventions at the earliest opportunity and to take effective measures to enforce their provisions.

"34. States that are not signatories to international conventions prohibiting terrorist violence are urged to accede to such conventions at the earliest opportunity and to take effective measures to enforce their provisions.

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j/ General Assembly resolution 3068 (XXVIII), annex.

"35. States are urged to sign and ratify the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, adopted by the conference of the International Maritime Organization, held at Rome in 1988, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, adopted by the International Conference on Air Law, which was convened by the International Civil Aviation Organization at Montreal, from 9 to 24 February 1988.

"36. The United Nations should develop ways and means of encouraging prevention policies, strategies and action by States to ensure the effective implementation of international conventions, including enhanced co-operation at the law enforcement, prosecution and judicial levels.

"37. A system of reporting and monitoring acts of terrorist violence and the responses of States should be developed within the United Nations, and annual reports should be made and widely circulated to Member States.

"38. The central role of the United Nations, and in particular of the Crime Prevention and Criminal Justice Branch, Centre for Social Development and Humanitarian Affairs of the United Nations Office at Vienna, should be strengthened in order to fulfil the above-mentioned objectives and other purposes of the Organization, including the preservation of peace, the strengthening of world order and the fight against crime under the rule of law.